

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 13-cr-20194

v

Honorable Thomas L. Ludington
Magistrate Judge Patricia T. Morris

JOHN CHARLES HART,

Defendant.

**ORDER ADOPTING REPORT AND RECOMMENDATION, GRANTING MOTION TO
DISMISS, DENYING MOTION TO VACATE SENTENCE, AND DENYING
CERTIFICATE OF APPEALABILITY AND PERMISSION TO PROCEED *IN FORMA
PAUPERIS ON APPEAL***

On January 30, 2014, Defendant John Hart pleaded guilty to Aggravated Sexual Abuse, §§ 2241(c), 1151, and 1153. He was sentenced to a 151 months' imprisonment on February 4, 2014.

On December 15, 2014, Hart filed a motion to vacate his sentence pursuant to 28 U.S.C. § 2255. Hart contends that his trial counsel was ineffective because he: (1) failed to conduct any pretrial investigation; (2) failed to interview defense witnesses; (3) failed to inform Hart of ongoing proceedings; (4) had a complete lack of communication; (5) failed to give Hart copies of discovery, the PSI report, and other documents; (6) failed, despite numerous requests, to file suppression motions; and (7) pressured Hart to submit to a polygraph examination. The Government filed a motion to dismiss Hart's habeas motion, asserting that Hart had executed a valid, enforceable appeal waiver as part of his plea agreement.

On July 1, 2015, United States Magistrate Judge Patricia Morris issued a report recommending that Hart's motion to vacate be dismissed because he waived his right to a

collateral attack in his plea agreement. Magistrate Judge Morris noted that Hart concedes that he “does not, however, deny that he understood all the terms of his plea agreement, including the [waiver].” ECF No. 41. Therefore, because “Petitioner has not alleged that his plea was the product of ineffective assistance of counsel,” Magistrate Judge Morris concluded “that the collateral attack waiver should be enforced and the case dismissed.” Rep. & Rec. 12.

Although Magistrate Judge Morris’s report explicitly stated that the parties to this action may object to and seek review of the recommendation within fourteen days of service of the report, neither Plaintiff nor Defendants filed any objections. The election not to file objections to the Magistrate Judge’s report releases the Court from its duty to independently review the record. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). The failure to file objections to the report and recommendation waives any further right to appeal.

Before Hart may appeal, a certificate of appealability must issue. *See* 28 U.S.C. § 2253(c)(1)(a); Fed. R. App. P. 22(b). A certificate of appealability may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). When a court denies relief on the merits, the substantial showing threshold is met if the petitioner demonstrates that reasonable jurists would find the court’s assessment of the claim debatable or wrong. *See Slack v. McDaniel*, 529 U.S. 473, 484-85 (2000). When a court denies relief on procedural grounds without addressing the merits, a certificate of appealability should issue if it is shown that jurists of reason would find it debatable whether the petitioner states a valid claim of the denial of a constitutional right, and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. *Id.* Here, jurists of reason would not find the Court’s ruling debatable. Therefore, a certificate of appealability and permission to proceed *in forma pauperis* on appeal will be denied.

Accordingly, it is **ORDERED** that the magistrate judge's report and recommendation (ECF No. 42) is **ADOPTED**.

It is further **ORDERED** that the Government's Motion to Dismiss (ECF No. 41) is **GRANTED**.

It is further **ORDERED** that Hart's Motion to Vacate (ECF No. 28) is **DENIED**.

It is further **ORDERED** that a certificate of appealability and permission to proceed *in forma pauperis* on appeal are **DENIED**.

s/Thomas L. Ludington
THOMAS L. LUDINGTON
United States District Judge

Dated: July 30, 2015

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing order was served upon each attorney or party of record herein by electronic means or first class U.S. mail and on John Charles Hart #48188—039, McDowell Federal Correctional Institution, P.O. Box 1009, Welch, WV 24801 by first class U.S. mail on July 30, 2015.

s/Karri Sandusky
Karri Sandusky, Acting Case Manager